

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Promote Policy  
and Program Coordination and Integration in  
Electric Utility Resource Planning.

Rulemaking 04-04-003  
(Filed April 1, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING  
DENYING CONSTELLATION NEWENERGY'S MOTION FOR  
MODIFICATION OF JUNE 24, 2005 INTERIM PROTECTIVE ORDER**

**1. Summary**

This ruling considers Constellation NewEnergy's July 11, 2005 motion to modify the Interim Protective Order (IPO) adopted in Administrative Law Judge (ALJ) Wetzell's June 24, 2005 ruling. Today's ruling is issued on the expedited basis CNE requests; however, it denies the substantive relief requested, declining to provide that future changes to the IPO will apply prospectively to subsequently submitted information. In sum, today's ruling leaves the IPO adopted in the June 24 Ruling completely intact.

**2. Procedural Background**

The June 24 Ruling directs load serving entities (LSEs) to submit specific load forecast data to the Commission staff in furtherance of the Commission's development, establishment, implementation, and operation of a program of statewide resource adequacy requirements. The ruling requires such data to be provided at this time only to the Commission staff, the CEC, other state agencies, and the California Independent System Operator (CAISO) under the provisions of the IPO, and in accordance with the schedule attached to the June 24 ruling.

The first submission (historic data) is due July 15, 2005, and the second submission (forecast data) is due August 15, 2005.

ALJ Wetzell also directed the parties to meet and confer to address the components of a protective order that would supersede the IPO and generally refine the requirement that LSEs justify their confidentiality claims, as well as provide broader access (beyond the Commission, the CEC, other state agencies, and the CAISO) to protected materials. The June 24 ruling recognized the need to balance appropriate protections of market sensitive information while maximizing access to information to the extent reasonably possible. This careful balancing of interests is necessary to achieve the desired outcome: crafting a protective order that is tailored to protect only those documents that are in fact legally protectable.

The parties are to report the status of these meet and confer efforts to the ALJ on July 20, 2005. The ALJ's pragmatic approach is designed to allow interagency staff to begin analyzing LSE load data in the near term, while also giving the parties an opportunity to discuss how the IPO might be refined as discussed above. ALJ Wetzell placed the LSEs on notice that "...the fact that the interim protective order may be replaced by a permanent protective order that allows greater access to data that may initially be designated as confidential shall not constitute grounds to withhold the submission of data as ordered by this ruling."<sup>1</sup>

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<sup>1</sup> June 24, 2005 Ruling, p. 7.

### **3. CNE's July 11 Motion**

Four days prior to due date for submission of the historical data under the provisions of the June 24 ruling, CNE filed its motion seeking modification of the IPO. Specifically, CNE requests that any future change to the scope or terms and conditions of the IPO as a result of the meet and confer process apply prospectively (i.e., to future data submissions) and that the nature and extent of the terms and conditions under which data is originally submitted under the IPO should remain “durable.”<sup>2</sup> CNE asserts that the requested IPO revision will (1) provide “regulatory certainty as to the terms and conditions applicable to the treatment of confidential and commercially sensitive data at the time of its submission,” (2) provide the assurance that LSE customers’ data will remain confidential, and (3) protect their specific aggregated load information from review by competitors such as other LSEs (Motion, page 5). CNE requests a ruling on its motion prior to the July 15, 2005 due date of the first round of data.<sup>3</sup>

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<sup>2</sup> To accomplish this change CNE proposes that Section 2 be revised to read: “This Protective Order shall remain in effect with respect to submitted data during the course of this proceeding and implementation of Resource Adequacy Requirements. The Protective Order may be modified by the Assigned ALJ, the Law and Motion ALJ, the Assigned Commissioner, or the Commission for prospective application to future data submissions after all affected parties have been given notice and have had a reasonable opportunity to be heard.” (CNE Motion, p. 4.)

<sup>3</sup> The period for response to CNE’s July 11 motion was shortened to one day, and responses were filed by the Alliance for Retail Energy Markets (supporting the motion), Californians for Renewable Energy, Inc. (opposing the motion), and The Utility Reform Network (opposing the motion). We have fully considered these responses in resolving the issues raised in CNE’s motion.

#### **4. Disposition of Motion**

This ruling, issued on the expedited basis requested so that parties clearly understand what is expected of them on July 15, declines to modify the IPO as CNE requests. There are several reasons for this determination.

The most compelling reason for denying CNE's motion is that the existing provisions of the June 24 2005 ruling and the IPO itself fully protect the rights of the parties, including CNE. All parties may participate fully in the meet and confer process that is a prelude to the permanent protective order envisioned by ALJ Wetzell. In addition, CNE and similarly situated parties have the protection of the "notice and opportunity to be heard" provisions of the existing IPO. Section 2 of the IPO currently reads: "This Protective Order shall remain in effect until it is modified or terminated by the Assigned ALJ, the Law and Motion ALJ, the Assigned Commissioner, or the Commission after all affected parties have been given notice and have had a reasonable opportunity to be heard."<sup>4</sup> Clearly this means that no change, to the existing IPO (including the particular outcome that concerns CNE and AreM) can be made without the formal involvement of all parties under these due process protections. Furthermore, after that process is concluded, aggrieved parties have remedies at law if they feel the Commission has erred in crafting the permanent protective order.

Further, the existing IPO provides as much certainty as is currently possible. There can be no guarantee that the Commission will not modify a protective order, or any other order,<sup>5</sup> at some future time, if such modification is

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<sup>4</sup> June 24, 2005 ruling, Appendix C, pp. C-1 to C-2.

<sup>5</sup> Pub. Util. Code § 1708.

within its legitimate authority and is otherwise merited or legally required. Essentially, CNE requests assurances we cannot provide.

Certainly, CNE presents no specific argument that the June 24 ruling's "meet and confer" process or the existing IPO's "notice and opportunity to be heard" provisions fail to protect its rights. In failing to address why it cannot protect its interests under these existing provisions, CNE has failed to carry its burden of showing that the specialized relief it requests is required.

**IT IS RULED** that:

1. The Motion of Constellation NewEnergy for Modification of the June 24, 2005 Interim Protective Order is denied.
2. The Administrative Law Judge's June 24, 2005 "Ruling Directing Load-Serving Entities to Submit Load Data and Adopting Protective Order" remains in full force and effect.

Dated July 14, 2005, at San Francisco, California.

/s/ LYNN T. CAREW

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Lynn T. Carew  
Assistant Chief  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by electronic mail to those who provided electronic mail addresses, and by U.S. mail to those who did not provide e-mail addresses, this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Constellation NewEnergy's Motion for Modification of June 24, 2005 Interim Protective Order on all parties of record in this proceeding or their attorneys of record.

Dated July 14, 2005, at San Francisco, California.

/s/ FANNIE SID

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Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.